91-868

Supreme Court, U.S.
FILED
NOV 26 1991
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No. _____

In The

Supreme Court of the United States

October Term, 1991

PEGGY ROBINSON,

Petitioner,

versus

RANDOLPH POURCIAU, JR., WAYNE ROGILLIO, and CITY OF BATON ROUGE,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the decision rendered by the Court of Appeals in the instant case is inconsistent with and contrary to the decisions of this Honorable Court in the case of *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 810 (1985); and *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018 (1978)?

2. Whether the inflicting of injury on an arrestee by a police officer while issuing a traffic ticket, as was done by the arresting police officer in the instant case, constitutes a significant injury within the ambit of *Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989) (en banc), where such injury consists of fractures of the L-1 and L-3 lumbar vertebrae, requiring protracted hospitalization; or is such indicative of prima facie evidence of the use of unnecessary and/or excessive force by the respondent, RANDOLPH POURCIAU, JR., while in the process of making such an arrest upon the person of petitioner, PEGGY ROBINSON?

3. Whether the respondent, WAYNE ROGILLIO, the Chief of Police, and the CITY OF BATON ROUGE, the municipality, are liable in damages, as such, under 42 U.S.C. § 1983, where the evidence unequivocally establishes that the respondent, RANDOLPH POURCIAU, JR., the arresting officer, was officially and authoritatively mandated and required to obtain the signature of the petitioner while in the process of issuing her a traffic ticket and permitted him to deny to her the right to change her mind and consent to signing when once she had refused to do so?

LIST OF PARTIES TO THE PROCEEDING

PETITIONER:

PEGGY ROBINSON, a near 55-year-old black female of legal competence, a resident of the Parish of East Baton Rouge, State of Louisiana; and a native born citizen of the United States.

RESPONDENTS:

RANDOLPH POURCIAU, JR., a white male police officer of the Department of Police of the City of Baton Rouge, Louisiana.

WAYNE ROGILLIO, a white male and Chief of the Department of Police of the City of Baton Rouge, Louisiana.

CITY OF BATON ROUGE, a municipal corporation, the Parish Seat of the Parish of East Baton Rouge, Louisiana.

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PEGGY ROBINSON,

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versus

RANDOLPH POURCIAU, JR., WAYNE ROGILLIO, and CITY OF BATON ROUGE,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

The petitioner, PEGGY ROBINSON, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, pp. 1a-6a), of which review is sought, is not reported; and the denial On Suggestion for Rehearing En Banc (App. B, pp. 1b-2b) is not officially reported.

JURISDICTIONAL STATEMENTS

The opinion of the Court of Appeals (App. A, pp. 1a-6a), of which review is sought, was entered on August 29, 1991, and received by petitioner's counsel of record on August 30, 1991; and the Suggestion for Rehearing En Banc (App. B, pp. 1b-2b) was denied by the Court of Appeals on September 23, 1991, which denial was received by petitioner's counsel of record on September 24, 1991.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States, First Amendment (App. C, p. 1c), Fourth Amendment (App. D, p. 1d), Sixth Amendment (App. E, p. 1e), Seventh Amendment (App. F, p. 1f), Eighth Amendment (App. G, p. 1g), and Fourteenth Amendment (App. H, p. 1h).

STATUTORY PROVISIONS INVOLVED

The federal statutes involved are:

28 U.S.C. § 1331 (App. I, p. 1i).

28 U.S.C. § 1343 (App. J, p. 1j).

42 U.S.C. § 1983 (App. K, p. 1k).

42 U.S.C. § 1988 (App. L, p. 1l).

The pertinent texts of the foregoing are set forth in the Appendix.

STATEMENT OF THE CASE

The petitioner, PEGGY ROBINSON, who, on October 12, 1987, was involved in a two-car collision; and the respondent, RANDOLPH POURCIAU, JR., without probable cause or any apparent reasons used unnecessary force and engaged in excessive, abusive and out-right brutal force and police brutality in effecting and unwarranted and unlawful arrest upon the petition, PEGGY ROBINSON, in violation of her constitutionally protected rights.

The allegations of Paragraphs 12 through 23, inclusively, of petitioner's Complaint (App. M, pp. 1m-9m) set forth the factual basis on which the petitioner, PEGGY ROBINSON, has predicated this action for damages under the Civil Rights Act of 1871, 42 U.S.C. § 1983.

REASONS FOR GRANTING THE WRIT

The petitioner's contentions for consideration of this application or Petition for Writ of Certiorari by this Honorable Court is fully outlined and set forth in petitioner's Brief (App. N, pp. 1n-15n) which was submitted to the Court of Appeals, and petitioner's Petition for Rehearing En Banc (App. O, pp. 1o-11o which, too, was submitted to the Court of Appeals, and raises the questions, to-wit:

> 1. Whether the decision rendered by the Court of Appeals in the instant case is inconsistent with and contrary to the decisions of this Honorable Court in the cases of: *City of Oklahoma City v. Tuttle*, 471 U.S. 808, at 810 (1985); and *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S. Ct. 2018 (1978)?

2. Whether the inflicting of injury on an arrestee by a police officer while issuing a traffic ticket, as was in the instant case, constitutes a significant injury within the ambit of *Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989) (en banc), where such injury consists of fractures of the L-1 and L-3 lumbar vertebrae, requiring protracted hospitalization; or is such indicative of prima facie evidence of the use of unnecessary and/or excessive force by the respondent, RANDOLPH POURCIAU, JR., while in the process of making such an arrest upon the person of petitioner, PEGGY ROBINSON?

3. Whether the respondents, WAYNE ROGILLIO, the Chief of Police, and the CITY OF BATON ROUGE, the municipality, are liable in damages, as such, under 42 U.S.C. § 1983, where the evidence establishes that the respondent, RANDOLPH POURCIAU, JR., the arresting officer, was officially and authoritatively mandated and required to obtain the signature of the petitioner while in the process of issuing her a traffic ticket and permitted him to deny to her the right to change her mind and consent to signing when once she had refused to do so?

The respondents, RANDOLPH POURCIAU, JR., WAYNE ROGILLIO, and CITY OF BATON ROUGE, **chose not to file a brief** on their behalf with the Court of Appeals (App. P, p. 1p).

CONCLUSION

WHEREFORE, on the submissions hereof, the petitioner, PEGGY ROBINSON, prays that a writ of certiorari

issue to review the judgment and opinion of the United States Court of Appeals, Fifth Circuit.

Respectfully submitted,

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DATED: November 25, 1991

No. ——

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1991

PEGGY ROBINSON,
Petitioner,

versus

RANDOLPH POURCIAU, JR., WAYNE ROGILLIO, and CITY OF BATON ROUGE,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

APPENDICES

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APPENDIX 'A'

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 90-3700
Summary Calendar

PEGGY ROBINSON,

Plaintiff-Appellant,

versus

RANDOLPH POURCIAU, JR., ET AL,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA-88-860-B)

(August 29, 1991)

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.[1] EDITH H. JONES, Circuit Judge:

Peggy Robinson brought this § 1983 action against Officer Randolph Pourciau alleging that he violated her

---

[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

constitutional rights by subjecting her to a false arrest, and by using excessive force to effectuate that arrest. In this action, Robinson also sued Police Chief Wayne Rogillio and the City of Baton Rouge, alleging that they violated her rights through their policy and custom of inadequately training, supervising, and disciplining police officers. The district court granted the defendants' motions for directed verdict on all but the excessive force claim. The jury found in favor of Pourciau on that claim. We AFFIRM.

I.

BACKGROUND

On October 12, 1987, Officer Pourciau investigated a minor traffic accident involving Robinson and Elizabeth Pulliam-Wells. When Officer Pourciau arrived at the reported scene of the accident, Robinson and Pulliam-Wells had already moved their cars. Pourciau found them a short distance from the accident scene, arguing about the accident. After discussing the accident with Robinson and Pulliam-Wells, Pourciau decided to issue two traffic tickets to Robinson. Robinson refused to sign the tickets, and Pourciau attempted to arrest her. By this time, Pulliam-Wells had departed and Officer James Lynch had arrived to assist Pourciau. After Lynch helped Pourciau remove Robinson from her car, Robinson sat on the ground and began screaming that she was hurt. Pourciau and Lynch called Emergency Medical Services (EMS) to transport Robinson to the hospital.

II.

FALSE ARREST

Robinson first contends that the district court erred by finding that Pourciau had probable cause to arrest Robinson and entering a directed verdict for Pourciau on the false arrest claim. Robinson is apparently arguing that probable cause for the arrest was lacking as a matter of law.

Probable cause exists when the facts and circumstances within the police officer's knowledge and of which he had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *United States v. Randall*, 887 F.2d 1262, 1265 (5th Cir. 1989) (citations omitted). Probable cause is a question of law subject to de novo review. *See United States v. One Mercedes 1987 560 SEL*, 919 F.2d 327, 330 (5th Cir. 1990). However, if there is a dispute in the facts underlying the probable cause determination in a civil case, the fact issues might have to be submitted to a jury.

In this case, the only factual dispute in the record does not support Robinson. Officer Pourciau testified that Robinson refused to sign the traffic tickets, despite his repeated requests and explanation that her signature was not an admission of guilt, but merely a promise to appear in court. Officer Pourciau also testified that he explained to Robinson that if she did not sign the tickets he would arrest her. Robinson admitted that she refused to sign the tickets. However, she testified that she eventually agreed to sign the tickets but Pourciau stated that "it was too late." Robinson's refusal to sign the tickets gave Pourciau

cause to arrest her; it was not his obligation to bide his time indefinitely awaiting her agreement. Based on his evidence, the district court concluded as a matter of law that Pourciau had probable cause to arrest Robinson. We agree and affirm the directed verdict.

III.

EXCESSIVE FORCE

Robinson also challenges the jury's finding that Pourciau did not use excessive force during the arrest. To establish her excessive force claim, Robinson must prove: (1) that she suffered a significant injury, which (2) resulted directly and only from the use of force that was clearly excessive to the need, and the excessiveness of which was (3) objectively unreasonable. *Johnson v. Morel*, 876 F.2d 477, 480 (5th Cir. 1989) (en banc). Whether Pourciau used unreasonable, excessive force to arrest Robinson is a question of fact, which the district court properly submitted to the jury. *See id.*

Robinson testified that Pourciau pulled her out of her car, threw her to the ground, kicked her several times, and roughly handcuffed her hands behind her back. Pourciau testified that he tried to pull Robinson out of the car, but she wrapped her hands tightly around the steering wheel. He stated that he had placed a handcuff on one of her wrists when Officer Lynch arrived. Officer Lynch then attempted to coax Robinson out of the car. Eventually she climbed out of the car and sat on the ground, screaming that she was hurt. Officer Lynch's testimony confirmed Pourciau's depiction of the incident.

Weighing conflicting evidence and determining the credibility of witnesses is the function of the jury. *Boeing*, 411 F.2d at 375. In this case, the jury found that Pourciau and Lynch were more credible than Robinson. Based on the officers' testimony, the jury clearly did not err in finding that Pourciau did not use unreasonable, excessive force to arrest Robinson.

IV.

MUNICIPAL LIABILITY

Finally, Robinson contends that the district court erred by granting Rogillio's and the City's motions for directed verdict. The Supreme Court has held that "a municipality can be found liable under § 1983 only where the municipality *itself* causes the constitutional violation at issue. *Respondent superior* or vicarious liability will not attach under § 1983." *City of Canton, Ohio v. Harris*, 489 U.S. 378, ___, 109 S.Ct. 1197, 1203 (1989) (citing *Monell v. New York City Dept. of Social Sciences*, 436 U.S. 658, 694-95, 98 S.Ct. 2018, 2037-38 (1978)). A municipality may be held liable under § 1983 only when the execution of its policy or custom inflicts the injury. *Id.* (citations omitted). "Thus, our first inquiry in any case alleging municipal liability under § 1983 is the question of whether there is a direct causal link between a municipal policy or custom, and the alleged constitutional deprivation." *Id.*

Robinson introduced no evidence to establish the City's policies and customs concerning the training, supervision, or discipline of officers. Robinson also failed to introduce any evidence to establish a causal link between the City's policies and the alleged deprivation of

her constitutional rights. Based on Robinson's complete failure to introduce evidence to support her claim against the City and Rogillio, the district court properly granted their motions for directed verdict. *See Boeing,* 411 F.2d at 374-75.

V.

CONCLUSION

For the foregoing reasons we AFFIRM the judgment of the district court.

APPENDIX 'B'

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 90-3700

PEGGY ROBINSON,
Plaintiff-Appellant,

VERSUS

RANDOLPH POURCIAU, JR., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana

ON SUGGESTION FOR REHEARING EN BANC

(Opinion 08/29/91, 5 Cir., 198___, ___F.2d___)

(September 23, 1991)

Before JOLLY, HIGGINBOTHAM and JONES, Circuit Judges.

PER CURIAM:

(X) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

( ) Treating the suggestion for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges irregular active service of this Court having been polled at the request of one of said judges and a majority of said judges not having voted in favor of it (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Edith H. Jones 9/18/91
United States
Circuit Judge

CLERICAL NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

APPENDIX 'C'

AMENDMENT [I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX 'D'

AMENDMENT [IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX 'E'

Amend. 6 CONSTITUTION

AMENDMENT VI – JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

APPENDIX 'F'

AMENDMENT 7 - CONSTITUTION

AMENDMENT VII - CIVIL TRIALS

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

APPENDIX 'G'

AMENDMENT VIII – EXCESSIVE BAIL, FINES,

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

APPENDIX 'H'

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV. – CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX 'I'

JUDICIARY - PROCEDURE

28 U.S.C. § 1331.

FEDERAL QUESTION

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

APPENDIX 'J'

DISTRICT COURTS; JURISDICTION

28 U.S.C. § 1343.

CIVIL RIGHTS AND ELECTIVE FRANCHISE

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

APPENDIX 'K'

CIVIL RIGHTS

42 U.S.C. § 1983.

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

APPENDIX 'L'

§ 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

APPENDIX 'M'

IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA

NO. 88-860-B

PEGGY ROBINSON
Plaintiff
VERSUS
RANDOLPH POURCIAU, JR.,
WAYNE ROGILLIO, CITY OF BATON ROUGE
Defendants

FIRST AMENDING AND
SUPPLEMENTAL COMPLAINT

I. NATURE OF THE PROCEEDINGS

1. This is a civil action seeking damages against the defendants for committing unlawful acts under color of law, and for denial of equal protection under the laws on account of plaintiffs race, which acts substantially deprived plaintiff of rights secured under the Constitution and laws of the United States and/or the State of Louisiana.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction of this action under 42 U.S.C. § 1983 and 28 U.S.C. § 1343.

3. Jurisdiction of the Court is further invoked pursuant to 42 U.S.C. § 1981.

4. Jurisdiction of the Court is further invoked pursuant to 28 U.S.C. § 1331.

5. Jurisdiction of the Court is further invoked pursuant to the First, Fourth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

6. This Court's pendent jurisdiction is invoked with respect to the claims arising under Article I, Sections 2 and 3 of the Louisiana Constitution of 1974, and under Louisiana Civil Code Article 2315.

7. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b).

III. PARTIES TO THE PROCEEDINGS

8. Plaintiff, PEGGY ROBINSON, a major, Black and citizen of the State of Louisiana, is domiciled in the Parish of East Baton Rouge Parish.

9. Defendant, RANDOLPH POURCIAU, JR., badge number 336, is an officer in the Baton Rouge Police Department. He is sued individually and in his official capacity.

10. Defendant, WAYNE ROGILLIO, was at all times described in this complaint Chief of Police of the CITY OF BATON ROUGE. As such, he was the commanding officer of the defendant and was responsible for the training, supervision, and conduct of defendant. He is also responsible by law for enforcing the regulations of the Baton Rouge City Police Department and for ensuring that the Baton Rouge City Police officers obey the laws of the State of Louisiana and the United States. He is sued individually and in his official capacity.

11. The defendant, CITY OF BATON ROUGE is a municipal corporation within the State of Louisiana and at all times relevant hereto employed the defendants,

RANDOLPH POURCIAU, JR. and WAYNE ROGILLIO, as police officer and Chief of Police, respectively.

IV. STATEMENT OF CLAIM

12. On or about October 12, 1987, plaintiff, PEGGY ROBINSON, was proceeding south on Airline Highway when she was struck, on the left side, by a vehicle operated by another motorist.

13. Defendant, RANDOLPH POURCIAU, JR., attempted to arrest plaintiff for no apparent reason. Defendant, RANDOLPH POURCIAU, JR., threatened to arrest the plaintiff while pulling her from the vehicle in which she was seated, while she was hand cuffed, then dragging her across the pavement, then kneed her in the back and kicked her several times. Plaintiff had previously warned the defendant about the condition of her back.

14. Plaintiff had committed no illegal act at the time of the attempted arrest and at no time did she use any force or resistance.

15. In effecting this arrest, defendant used excessive, abusive and unnecessary force and/or out-right brutal force on the person of the plaintiff. The defendant, RANDOLPH POURCIAU, JR., pushed and shoved the plaintiff while shouting he would show the plaintiff about her constitutional rights. After injuring the plaintiff, the defendant, RANDOLPH POURCIAU, JR., then refused to secure medical treatment for the plaintiff, PEGGY ROBINSON.

16. Defendant, RANDOLPH POURCIAU, JR., caused plaintiff to be charged with resisting arrest, improper lane usage and no proof of insurance, although no probable cause existed for said charges.

17. The acts of defendant, POURCIAU, constitute unlawful arrest, false imprisonment, excessive use of force which caused serious injury, unnecessary force, abusive force and/or police brutality, all in violation of the First, Fourth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; 42 U.S.C. § 1981 and § 1983; Article I, Sections 2 and 3 of the Louisiana Constitution of 1974; and Article 2315 of the Louisiana Civil Code.

18. Defendant POURCIAU's actions were motivated by the race of the plaintiff, which is a denial of equal protection of the law.

19. (a) The acts of defendant, RANDOLPH POURCIAU, JR., were under color of state law and, as referred to previously herein, were condoned and acquiesced in by the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO, under color of state law and under color and pretense of the statutes, ordinances, regulations, customs and usages of the State of Louisiana and the City of Baton Rouge, and under the authority of their officers as officials of the City of Baton Rouge.

(b) The excessive use of force by the defendant, RANDOLPH POURCIAU, JR., caused the plaintiff, PEGGY ROBINSON, serious injury in that her vertebrae was fractured at the L3 joint which was complicated by osteosclerosis with contusions to the buttocks and severe strain to the right elbow and right knee. Plaintiff, PEGGY ROBINSON, has been unable to continue in her employment in the same manner she did prior to the incident which is the subject of this law suit.

(c) The defendants, CITY OF BATON ROUGE and CHIEF WAYNE ROGILLIO, adopted a policy of

allowing this police officer, or its police officers to wrongfully arrest and abuse citizens under color of the laws of the State of Louisiana and ordinances of the City of Baton Rouge, by remaining indifferent to numerous complaints filed by citizens against its police officers and against defendant, POURCIAU, in particular.

(d) Although a departmental investigation was conducted, the police department condoned the actions of the defendant, RANDOLPH POURCIAU, JR., by not recommending disciplinary action and subsequently promoting this particular officer, increasing his grade and rank.

(e) The actions of defendant, POURCIAU, resulted from and were taken pursuant to a de facto policy of the defendants, CITY OF BATON ROUGE and CHIEF ROGILLIO, acting under color of the laws of the State of Louisiana and the City of Baton Rouge, to deny equal protection of the laws to some citizens of the City of Baton Rouge, including Plaintiff, by means of unlawful arrest, detention and excessive use of force.

(f) Defendants, CITY OF BATON ROUGE's and WAYNE ROGILLIO's, policy and custom of failure to adequately train, supervise and discipline defendant, POURCIAU, and other officers of the Baton Rouge Police Department in the exercise of their police duties, and their failure to enforce the laws of the United States, State of Louisiana and the regulations of the Baton Rouge Police Department, while acting under color of state law and city ordinances, were carried out in a willful and wanton disregard for the constitutionally protected rights of a portion of the citizens of the City of Baton

Rouge. This policy of the Department is illustrated by the following nonexclusive acts:

(1) Officer Rhodes, after shooting and killing an unarmed black man, was allowed to remain on the force.

(2) Officer Michael Gillen was allowed to remain on traffic patrol after a Deputy Police Chief, John B. Firmin recommended that he be removed because of complaints made against him.

(3) Sergeant Howe was allowed to remain on the force after being charged with murder. The police chief did not take action to remove him from the force until after his conviction.

20. The actions of the defendants, RANDOLPH POURCIAU, JR., CITY OF BATON ROUGE and WAYNE ROGILLIO, were conducted under color of state law; under the guise of ordinances and policies of the City of Baton Rouge; and under the regulations, customs, policies and practices of the Baton Rouge Police Department. Said action of the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO caused and/or allowed the defendant, RANDOLPH POURCIAU, JR., to violate plaintiff's, PEGGY ROBINSON's, constitutional rights, together with malicious prosecution through the criminal justice system. The Constitutional deprivations suffered by the plaintiff, PEGGY ROBINSON, at the hands of defendant, RANDOLPH POURCIAU, JR., were pursuant to governmental policy and custom of the defendant, CITY OF BATON ROUGE, and departmental policy and custom of the Baton Rouge Police Department and defendant, WAYNE ROGILLIO.

21. Although Louisiana Code of Criminal Procedure article 211 provides that the officer shall give a written summons if: (1) the person will appear; (2) is not likely to hurt himself; and (3) there is no necessity to book the person to comply with routine identification procedures, the defendant attempted to arrest the plaintiff, PEGGY ROBINSON.

22. Defendant, CITY OF BATON ROUGE and WAYNE ROGILLIO, breached their duty owed to members of the public, of which plaintiff is one, to adequately train, supervise, and discipline defendant, POURCIAU, and other officers of the Baton Rouge Police Department in the exercise of their police duties; and to enforce the laws of the United States, State of Louisiana and the regulations of the Baton Rouge Police Department.

23. The breach of duty owed to plaintiff and citizens of Baton Rouge by the defendant, CITY OF BATON ROUGE and CHIEF ROGILLIO, caused the plaintiff to suffer damages, inequities, and degradation of her constitutional rights, all as outlined herein above.

24. Defendants are liable to the plaintiff for damages.

25. Plaintiff desires a TRIAL BY JURY, accorded to him by the Seventh Amendment of the Constitution of the United States, and authorized in this action under the provisions of 28 U.S.C. § 1981, in the manner therein prescribed; and by Rule 38(a) and (b) of the Federal Rules of Civil Procedure, 28 U.S.C.

V. PRAYER FOR RELIEF

WHEREFORE, plaintiff, PEGGY ROBINSON, requests the following relief, in solido, against the defendants:

1. Compensatory damages in the amount of $2,500,000.00;

2. Reasonable attorneys' fees at the rate of $250.00 per hour, or in the amount of 33 1/3% of the aggregate amount that may be recovered, whichever is greater, plus out-of-pocket expenses, and costs;

3. Such other and further relief as appears legal, just and reasonable, in law and equity; and

4. For a TRIAL BY JURY, accorded to Plaintiff by the Seventh Amendment of the Constitution in the manner prescribed under the provisions of 28 U.S.C. § 1861; and authorized by Rule 38(a) and (b) of the Federal Rules Civil Procedure, 28 U.S.C.

Respectfully submitted,

/s/ JOHNNIE A. JONES, JR.
Johnnie A. Jones, Jr.
JONES & JONES,
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251 Florida Street, Suite 215
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CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiff, PEGGY ROBINSON, does hereby certify that on this 27th day of Feb. 1989, a copy of the above and foregoing 'First Amending and Supplemental Complaint', has been mailed by regular first class U.S. mail to:

Mr. Samuel R. Cicero
CICERO AND MOAK
Attorneys and Counselors at Law
Suite 5, 4521 Jamestown Avenue
Baton Rouge, Louisiana 70808-3265

/s/ JOHNNIE A. JONES, JR.
Johnnie A. Jones, Jr.

APPENDIX 'N'

IN THE

UNITED STATES COURT OF APPEALS

FOR THE

FIFTH CIRCUIT

NUMBER: 90-3700

PEGGY ROBINSON, Plaintiff-Appellant,

versus

RANDOLPH POURCIAU, JR., ET AL., Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana, Section B,
the Honorable Frank J. Polozola, Judge presiding

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

MAY IT PLEASE THE COURT:

STATEMENT OF JURISDICTION

This action commenced on October 12, 1988, upon the plaintiff-appellant, PEGGY ROBINSON (hereinafter may be simply referred to as "**PLAINTIFF**"), filing her original complaint in the United States District Court against the defendants-appellees, RANDOLPH POURCIAU, JR., WAYNE ROGILLIO, and CITY OF BATON ROUGE (hereinafter may be simply referred to as

"**DEFENDANTS**"), where it was docketed under Number **88-860,** and allotted to Section **B** of that Court.

This action is sounding in torts, alleging **police brutality, unnecessary force, excessive force, unlawful arrest, false imprisonment** and **malicious prosecution,** without probable cause, for wrongful acts of conduct perpetrated and committed against plaintiff by the defendants purporting to be acting individually and respectively in their official capacities, under the **color of authority,** in violation of the plaintiff's rights accorded to her by the First and Fourteenth Amendments of the Constitution of the United States and protected to her by the Civil Rights Act of 1871, 42 U.S.C. § 1983.

This action is to recover damages for reasons that the defendants, **in solido,** are liable in damages to the plaintiff for general and punitive damages as allowable under 42 U.S.C. § 1983; and for costs and attorney's fees as authorized by the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988.

After the plenary trial, which was **by Jury,** that concluded in a verdict for the defendants, the **final judgment** was entered on August 29, 1990; and plaintiff filed timely **notice of appeal** on September 24, 1990.

Therefore, as a matter of right, plaintiff-appellant, PEGGY ROBINSON, has perfected this appeal as allowed by 28 U.S.C. § 1291, and authorized by Rule 4 of the Federal Rules of Appellate Procedure.

STATEMENT OF ISSUES

1. Whether the defendant, RANDOLPH POURCIAU, JR., acting under the color of authority as a Police Officer of the City of Baton Rouge, Louisiana, effected an unlawful arrest upon plaintiff, PEGGY ROBINSON, without probable cause, and in violation of her rights accorded to her by the First and Fourteenth Amendments of the Constitution of the United States and protected to her under 42 U.S.C. § 1983; and thus, the verdict and judgment are reversible errors?

2. Whether the defendant, RANDOLPH POURCIAU, JR., in effecting the arrest upon plaintiff, notwithstanding whether the arrest was unlawful, unwarranted, or unjustified or not, used unnecessary or excessive force in effecting the arrest upon plaintiff in utter disregard of her rights accorded to her by the First and Fourteenth Amendments and protected to her under 42 U.S.C. § 1983; and thus, the verdict and judgment are reversible errors?

3. Whether the Court erred by granting defendants' motion for a directed verdict on behalf of the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO, relative to the question of **policy, procedures** or **training** of the Police Officers of the City of Baton Rouge (R. Vol. 2, Tr. pp. 297-307); where, in fact, the evidence establishes that EMS arrived on the scene prior to Officer James E. Lynch (R. Vol. 2, Tr. p. 207), who by his testimony described the methodical pattern and practices of the Department of Police's requirement that make a **refusal to sign** a traffic ticket, when duly issued, an arrestable offense (R. Vol. 1, Tr. p. 142)?

STATEMENT OF THE CASE

(i) Course of Proceedings and Disposition in Court Below:

This is an appeal from a judgment entered upon a **jury verdict** returned in a police brutality case brought under 42 U.S.C. § 1983, deriving out of a slight automobile accident occurring on Airline Highway in the City Limits of the City of Baton Rouge, Louisiana, between the plaintiff, PEGGY ROBINSON, a black female, and a Ms. Elizabeth Pulliam-Wells, a white female.

Excluding the drivers of the vehicles, there were no eyewitnesses to the accident; and both vehicles had been distantly removed from the point of collision so as not to permit an investigation and inspection of the scene for deposits of debris from the vehicles so that a determination could be made as to which vehicle was wrongfully operated as to **improper lane usage violation**.

The Civil Rights action under 42 U.S.C. § 1983 alleges that the acts of the defendant, RANDOLPH POURCIAU, JR., constitute unlawful arrest, false imprisonment, excessive use of force which caused serious injury, unnecessary force, abusive force and/or police brutality, all in violation of plaintiff's rights accorded to her under the First, Fourth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United States.

The unlawful acts of conduct of the defendant, RANDOLPH POURCIAU, were under color of a statute, ordinance, regulation, custom, or usage, condoned by the defendants, CITY OF BATON ROUGE and WAYNE

ROGILLIO, the Chief of Police; and particularly, but non-exclusively, **Ordinance 13:5:70 – Resisting an officer** – provides:

> (a) "Resisting an Officer" defined. It shall be unlawful to resist an officer. "Resisting an officer" is the intentional opposition or resistance to, or obstruction of, an individual acting in his official capacity and authorized by law to make a **lawful arrest** . . . , or to serve any lawful process . . . , when the offender knows or has reason to know that the person arresting . . . , or serving process is acting in his official capacity.
>
> (b) Obstruction defined. The phrase "obstruction of" as used herein shall, in addition to its common meaning, signification and connotation mean:
>
> * * *
>
> (2) Any violence toward or any resistance or opposition to the arresting officer after the arrested party knows of or should have known of the officer's official status and of his intention to effect the arrest.
>
> (3) Refusal by the arrested party to give his name and make his identity known to the arresting officer.
>
> (4) Congregates with others on a public street and refuses to move on when ordered by the officer. (Ord. No. 3948, § 1, 9-27-78).

The plaintiff alleged (R. p. 0025) and established by the testimony of Officer James E. Lynch (R. Vol. 1, Tr. p. 142) that the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO, Chief of Police, condoned a policy

and custom of failure to adequately **train** the defendant, RANDOLPH POURCIAU, JR., and other officers of the Baton Rouge Police Department of their lawful police duties while acting under the color of law, or what is willful and wanton disregard of the constitutionally protected rights of the individual citizen or person of the general public.

The defendants responded by asserting that the plaintiff's complaint fails to state a claim against the defendants upon which relief can be granted.

In spite of the findings of fact by the Court, that Emergency Medical Services (EMS) arrived at the scene of the altercation prior to Officer James E. Lynch (R. Vol. 2, Tr. p. 307, line 3), whose testimony effectively establishes that the defendant, RANDOLPH POURCIAU, JR., and other officers of the traffic investigation division of the Department of Police, are **inadequately trained** in handling traffic offenders who refuse to sign a traffic ticket issued by a police officer (R. Vol. 1, Tr. p. 142); and the **refusal to sign** is made an arrestable offense.

The defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO, having been dismissed on defendants' motion for a directed verdict (R. Vol. p. 0152 and R. Vol. 2, pp. 297-299); and the verdict by the **Jury** (R. Vol. p. 0153) and the **judgment** of the Court (R. Vol. p. 0153A) being in favor of the defendant, RANDOLPH POURCIAU, JR.; and the plaintiff, PEGGY ROBINSON, being aggrieved by the dispositions so made of this Civil Rights action she prosecutes under 42 U.S.C. § 1983; and, also, believing such dispositions to be erroneous and contrary to the law and evidence, timely perfected this appeal.

(ii) Statement of Facts:

The plaintiff, PEGGY ROBINSON, a major and a black female, prosecutes this Civil Rights action under 42 U.S.C. § 1983 against the defendants, RANDOLPH POURCIAU, JR., CITY OF BATON ROUGE and WAYNE ROGILLIO, for police brutality. They are being civilly prosecuted in their official or legal capacities as alleged (R. Vol. p. 0022).

This cause of action grows out of a simple automobile accident occurring on **October 12, 1987,** between the plaintiff, PEGGY ROBINSON, and Elizabeth Pulliam-Wells, a white female (R. Vol. 1, Tr. pp. 67, 87).

Excluding the drivers of the automobiles involved in the accident, there was not an identifiable eyewitness to this minor automobile accident occurring between Ms. Robinson and Ms. Pulliam-Wells on October 12, 1987 (R. Vol. 2, Tr. pp. 311, 313, 325); and the defendant, RANDOLPH POURCIAU, JR., as the accident investigating officer, made no inspection of the scene of the occurrence of the accident to make a determination by deposits of debris **improper lane usage** of which vehicle (R. Vol. 2, Tr. pp. 326-327, and Vol. 1, Tr. p. 125).

The plaintiff, PEGGY ROBINSON, committed no act of conduct toward the defendant, Officer POURCIAU, to justify his acts of conduct toward her, and upon her person, for **refusing to sign a traffic ticket** under a **policy requirement** of the **City Court Judges** and the **Department of City Police** (R. Vol. 1, Tr. p. 126), and the ordinance he believed passed by the defendant, CITY OF BATON ROUGE, requiring every Police Officer to **adhere**

to the Judges' Order (R. Vol. 1, Tr. pp. 126, 142), and to **arrest** a traffic violator who **refuses to sign** even after having obtained the traffic violator's name, address, Driver's License, Vehicle Registration, Information of Insurance, and by-on-the-scene-issued **Courtesy Card** by which the Investigating Officer exchanges the gathered information with parties involved in the accident and incorporates the information from each **Courtesy Card** into the Officer's written Accident Report (R. Vol. 1, Tr. pp. 77-78, 82).

The accident was reported to the Traffic Division of the Department of Police by the plaintiff, PEGGY ROBINSON; and the defendant, RANDOLPH POURCIAU, JR., as the accident investigating officer, was dispatched to the location of the parties involved in the accident (R. Vol. 1, Tr. pp. 67-71); that, as the investigating officer, he made the decision to issue the plaintiff two tickets, **improper lane usage** and **no proof of insurance,** based on Ms. Pulliam-Wells' statement and because the plaintiff denied being in an accident (R. Vol. 1, Tr. p. 85); and **called** for a **back up witness before** she was **asked to sign** the traffic tickets (R. Vol. 1, Tr. pp. 88-89).

After getting the information for the **Courtesy Cards,** Ms. Pulliam-Wells was permitted to leave; but plaintiff was retained and the **back up witness,** Officer Lynch, came on the scene after Ms. Pulliam-Wells had left. Officer Pourciau wanted a witness (R. Vol. 1, Tr. pp. 91-92).

After Officer POURCIAU had instructed plaintiff to move her car back on the parking lot of A.D.J. Seafood, he **grabbed** her in her neck and retrieved her keys from the ignition switch of her car, pushed her over and

attempted to **handcuff** her because he believed she was about to **escape** (R. Vol. 1, Tr. pp. 92-100). Then he dragged her out of the automobile onto the ground, causing injury to her back, neck, elbow and buttock (R. Vol. 2, Tr. pp. 247-260).

The plaintiff, PEGGY ROBINSON, did not commit any **hostile act** (R. Vol. 1, Tr. p. 93, R. Vol. 2, Tr. pp. 249-252, and 244) toward the defendant, Officer RANDOLPH POURCIAU, JR.: but, nevertheless, he persisted in his willfulness and intention to use **unnecessary** and **excessive force** to **arrest** her **without probable cause,** or under the contention that she **refused to sign** a lawfully issued **traffic ticket** (R. Vol. 1, Tr. pp. 91-100), believing that he had **no alternative** (R. Vol. 1, Tr. pp. 94-95) **but to arrest her** in accordance with his **training and understanding of the instructions of the Judges** of the City Court (R. Vol. 1, Tr. p. 126) and the **policy** and an **Ordinance** of the defendant, CITY OF BATON ROUGE (R. Vol. 1, Tr. pp. 126, 142).

Officer POURCIAU wrongfully abused and seriously injured her person, physically, without probable cause, as is established by the testimony of Dr. Johnny V. Jenkins, an orthopedic surgeon (R. Vol. 1, Tr. p. 174), who professionally attended her during her hospitalization period at Baton Rouge General Medical Center for the **L-3 compression fracture** she sustained at the instance of the defendant, Officer POURCIAU, on October 12, 1987 (R. Vol. 1, Tr. pp. 176-179), immediately, following her being transported from the scene of the altercation to **emergency room** of the hospital (R. Vol. 1, Tr. p. 179) by Emergency Medical Services (EMS) (R. Vol. 2, Tr. pp. 236-239).

Dr. Alvin Stander, an orthopedist (R. Vol. 2, Tr. pp. 207-211), from whom plaintiff sought a **second medical opinion,** was consulted on December 4, 1987 (R. Vol. 2, Tr. p. 209); and X-Rays taken by him disclosed **a fracture of the first lumbar** vertebrae with minimum compression (R. Vol. 2, Tr. pp. 210-212), which was not a fresh fracture (R. Vol. 2, Tr. pp. 212-213) **and was caused by trauma** some **weeks** before he saw her and X-Rayed her back on December 4, 1987 (R. Vol. 2, Tr. p. 214).

Dr. Stander explained **trauma** to mean **excessive force** (R. Vol. 2, Tr. p. 213); and advised plaintiff to **continue treatment** under Dr. Jenkins (R. Vol. 2, Tr. p. 211). Dr. Stander never reviewed the **X-Rays** and **bone scan** made or taken at Baton Rouge General Medical Center (R. Vol. 2, Tr. p. 214 and R. Vol. 1, Tr. pp. 176-177).

During the three months it took the fractures to heal (R. Vol. 1, Tr. pp. 176-177), plaintiff was admitted to hospitalization twice, from 10-12-87 to 10-15-87 and from 10-16-87 to the skilled nursing area of the hospital where she could receive professional care in "medications and stuff she needed for pain and continued therapy," when she was released from hospitalization on 10-22-87 (R. Vol. 1, Tr. p. 179).

While the fractures were healing, plaintiff had to use **mechanical devises,** such as a walker, crutches, or wheel-chair (R. Vol. 1, Tr. pp. 190-191 and R. Vol. 2, Tr. p. 258), in the assistance of her rehabilitation during the three months it took the fractures to heal and for her to regain independent strength (R. Vol. 1, Tr. p. 191); and plaintiff knows how to use a **long handle umbrella** so as to not to

attract attention to the fact that she has a problem (R. Vol. 2, Tr. p. 259).

Dr. Stander unequivocally testified that the incident of October 12, 1987, **caused** plaintiff's problem (R. Vol. 2, Tr. p. 214, lines 19 through 24).

SUMMARY OF THE ARGUMENT

The verdict and judgment are erroneous and contrary to the law and the evidence in this case predicated and made under 42 U.S.C. § 1983.

The assertions of police brutality in the allegations of the complaint fall into three categories: (1) unlawful arrest without probable cause by the individual police officer, the defendant, RANDOLPH POURCIAU, JR.; (2) use of unnecessary or excessive force in effecting the arrest, whether lawful or not, by the individual police officer, the defendant, RANDOLPH POURCIAU, JR., or (3) that the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO, order and enforce a policy and custom of failure to adequately train, supervise and discipline Officer POURCIAU, and other officers of the Baton Rouge Department of Police in the exercise of their police duties, while acting under color of state law and city ordinances.

Therefore, the defendants willfully and wantonly disregarded and violated plaintiff's constitutionally protected rights.

The Court erred by dismissing the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO, the Chief of

Police, from this action on defendants' motion for a directed verdict.

ARGUMENT

[Points 1 and 2]

PLAINTIFF WAS UNLAWFULLY ARRESTED WITHOUT PROBABLE CAUSE, OR THAT THE ARREST, WHETHER OR NOT LAWFUL OR UNLAWFUL, WAS BY UNNECESSARY OR EXCESSIVE FORCE.

Congress has provided the Civil Rights Act of 1871, 42 U.S.C. § 1983, as a vehicle to seek money damages for violation of plaintiff's right to be free from **illegal arrests.** *Monroe v. Pape*, 355 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961); *Nesmith v. Alford*, 318 F.2d 110, reh. dn. 319 F.2d 859 (5th Cir. 1963), cert. denied, 375 U.S. 975, 84 S.Ct. 489, 11 L.Ed.2d 420 (1964).

It is submitted that the enumerated factual statement of this case meets all of the criteria of *Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989), as this Court then was being guided by the decision of the Supreme Court in *Graham v. Connor*, ___ U.S. ___ 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989), holding:

> Elements of constitutional excessive force claim are: significant injury, which resulted directly and only from use of force that was clearly excessive to need, and excessiveness of which was objectively unreasonable.

The jurisprudence of the State of Louisiana consistently holds that where **resisting arrest** is applicable, verbal opposition to an officer, even abusive language and cursing, does not constitute the **opposition** and

obstruction proscribed by a **resisting arrest statute.** *White v. Morris,* 345 So.2d 461 (La. 1977); *Norrell v. City of Monroe,* 357 So. 2d 159 (La. App.2d Cir. 1979); *Malone v. Fields,* 335 So.2d 538 (La. App. 2d Cir. 1976).

[Point 3]

THE INDIVIDUAL POLICE OFFICER WAS ACTING UNDER COLOR OF LAW AND PURSUANT TO TRAINING RECEIVED CONSISTENT WITH POLICY CONDONED BY THE DEFENDANTS, CITY OF BATON ROUGE AND CHIEF OF POLICE, WHO ARE ERRONEOUSLY DISMISSED FROM THIS ACTION ON DEFENDANTS' MOTION FOR DIRECTED VERDICT.

Every individual has the right to be free from unreasonable or arbitrary interference by police officers and has a right of constitutional dimension to be free from unlawful arrest and detention. *Jenkins v. Averett,* 424 F.2d 1228 (4th Cir. 1970); *Pritchard v. Perry,* 508 F.2d 423 (4th Cir. 1976).

Under the fact-finding circumstances of this case, it cannot be reasonably concluded that the plaintiff, PEGGY ROBINSON, was going to, or was about to, commit, any type of wrongful act upon officer POURCIAU, who had been dispatched to the scene of a minor automobile accident at plaintiff's instance. *Williams v. Thomas,* 692 F.2d 1032 (5th Cir. 1982).

A person arrested without probable cause has been deprived of a right under the Constitution of the United States; and 42 U.S.C. § 1983 provides a mean for redress.

A trial Court's findings of fact are "clearly erroneous" when the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Ealy v. Littlejohn*, 569 F.2d 219 (5th Cir. 1978).

CONCLUSION

It is submitted that the Jury Verdict, the Court's Rulings and Judgment are erroneous and contrary to the law and evidence and should be, by this Honorable Court, reversed, set aside, vacated, and replaced with a judgment of this Court granting unto the plaintiff, PEGGY ROBINSON, relief in accordance with the tenor of the demands of her complaint.

Respectfully submitted,

Attorneys for Plaintiff-Appellant:

DATED: March 11, 1991

JONES & JONES

/s/ Johnnie A. Jones
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CERTIFICATE OF SERVICE

Undersigned counsel of record for the appellant, Peggy Robinson, does hereby certify that a copy of the above and foregoing **Brief** is being forwarded to the opposing counsel of record by regular United States Mail, first-class postage prepaid, addressed as follows:

MR SAMUEL R CICERO
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Baton Rouge, Louisiana, this 11 day of March, 1991.

/s/ Johnnie A. Jones
JOHNNIE A. JONES, (Bar No. 8329),

APPENDIX O

IN THE

UNITED STATES COURT OF APPEALS

FOR THE

FIFTH CIRCUIT

NUMBER: 90-3700

PEGGY ROBINSON, Plaintiff-Appellant,

versus

RANDOLPH POURCIAU, JR., ET AL.,
Defendants-Appellees.

Appeals from the United States
District Court for the Middle District
of Louisiana, Section B the Honorable
Frank J. Polozola, Judge presiding

APPELLANT'S PETITION FOR REHEARING EN BANC

INTRODUCTION

NOW INTO COURT comes the appellant, PEGGY ROBINSON, and respectfully petitions for rehearing **en banc** of the Court's decision of August 29, 1991 (which was received by appellant's under-signed counsel of record on August 30, 1991), which affirmed the judgment of the District Court, dismissing appellant's lawsuit in this action brought against the appellees, RANDOLPH

POURCIAU, JR., WAYNE ROGILLIO, and CITY OF BATON ROUGE, for **police brutality, unnecessary force, excessive force, unlawful arrest, false imprisonment** and **malicious prosecution**, without probable cause, for wrongful acts of conduct perpetrated and committed upon the person of appellant, PEGGY ROBINSON (hereinafter may be simply referred to as **"PLAINTIFF"**), by the appellees, RANDOLPH POURCIAU, JR., WAYNE ROGILLIO, and CITY OF BATON ROUGE (hereinafter may be simply referred to as **"DEFENDANTS"**), while acting, individually and respectively, in their official capacities, under the **color of authority**, in violation of plaintiff's rights accorded to her by the First and Fourteenth Amendments of the Constitution of the United States protected to her by the Civil Rights Act of 1871, 42 U.S.C. § 1983.

Plaintiff seeks, contends, and maintains that the defendants are, **in solido**, liable and answerable in **compensatory, special** and **punitive damages** to plaintiff as allowable under 42 U.S.C. § 1983; and for costs and attorney's fees as authorized by the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988.

POINTS ON WHICH THIS PETITION IS BASED

1. The factual **"Background"** (Court's decision, p. 2) is in variance with the fact of the case as testified to by the disinterested witness, Michael Dewayne Jones, a bystander, who testified (R. Vol. II, Tr. p. 242, lines 13-18) that the "other Police Officer," referring to Officer James E. Lynch, drove up on a motorcycle after the plaintiff had been removed from her vehicle by the defendant, Police

Officer RANDOLPH POURCIAU, JR., which unbiased testimony by the witness, Michael Dewayne Jones, corroborates the testimony of the plaintiff, PEGGY ROBINSON, who testified (R. Vol. II, p. 250, line 21, through p. 253, line 9, inclusively) that when Officer Lynch arrived on the scene she was sitting on the ground pleading for someone, or anybody, to get her a doctor, because she was in excruciating pain. (R. Vol. II, Tr. p. 252).

2. There was **no probable cause** for the arrest, the undisputed evidence (R. Vol. II, Tr. pp. 250-252) clearly establishes that after the plaintiff reluctantly consented to accept the two tickets from Officer POURCIAU for minor traffic violations, plaintiff prevailed upon Officer POURCIAU to allow her to make a telephone call to her son to come and pick up her car and meet her at the booking desk to make her bond, which Officer POURCIAU purportedly allowed her to do; but only to disallow her acceptance to sign the two traffic tickets for purposes of **ordering her back into her car** (R. Vol. II, Tr. p. 250, line 21 through line 14, p. 252) so that he could claim that the unlawful acts and/or **unnecessary force** he was then going to use in perfecting the unlawful arrest upon Mrs. ROBINSON was because he believed she was about to **escape** (R. Vol. I, Tr. pp. 92-100).

3. No force was necessary to make the arrest; but, if any force was needed to make the arrest, Officer POURCIAU used **excessive force,** the testimony of Dr. Johnny V. Jenkins, an orthopedic surgeon (R. Vol. I, Tr. p. 174), who professionally attended the plaintiff during her hospitalization from date of accident October 12, 1987, to October 15, 1987, and from October 16, 1987, to October 22, 1987 (R. Vol. I, Tr. p. 179), at Baton Rouge General

Medical Center, for **L-3 compression** the plaintiff had sustained; and found by him as the physician who examined her immediately following her being transported to the **emergency room** of the hospital by Emergency Medical Services (EMS) (R. Vol. II, Tr. pp. 236-239); and Dr. Alvin Stander, who is the orthopedic surgeon the plaintiff consulted for **a second medical opinion,** and who found upon examination **a fracture of the first lumbar vertebrae** with minimum **compression** (R. Vol. II, Tr. pp. 207-211), which was not a fresh fracture (R. Vol. II, Tr. pp. 212-213); but, from the X-Rays taken by him on December 4, 1987, **the fracture was caused by trauma** some weeks prior to December 4, 1987 (R. Vol. II, Tr. p. 214). Dr. Stander defined or explained **"trauma"** to mean **"excessive force"** (R. Vol. II, Tr. p. 213); and advised plaintiff to **continue treatment** under Dr. Jenkins (R. Vol. II, Tr. p. 211).

4. The defendant, CITY OF BATON ROUGE, is liable and answerable in damages to the plaintiff, PEGGY ROBINSON, for reasons that as a **municipality** it requires its police officers to obtain the signatures of its residential citizens on tickets issued for traffic violations instead of merely requiring that such accused traffic violators be merely handed such traffic tickets; and by not otherwise requiring that its police officers be trained not consistently with the customs concerning the training, supervision, or discipline of its officers as provided by the testimony of **Officer James E. Lynch,** whose testimony (R. Vol. I, Tr. p. 142) is an explanation of a built-in policy requirement fashioned by the Judges of the City Court and adopted by the **municipality** as corroborated by the testimony of the defendant, RANDOLPH POURCIAU, JR.

(R. Vol. I, Tr. pp. 126, 142), who had exchanged the **Courtesy Cards** of the parties to the accident and released them to go, or to continue on their respective journeys until the other party, Ms. Pulliam-Wells, registered an objection to Officer POURCIAU allowing the plaintiff to continue on her way without being cited for a traffic violation (R. Vol. II, Tr. p. 249). At that point Officer POURCIAU exercised his personal liberty to change his mind; but unlawfully denied to plaintiff the right of liberty to change her mind and allow her to sign the traffic tickets after she had reluctantly accepted to do so, all of which was done under the **color of authority,** and denied and deprived plaintiff of her rights, privileges, and liberty accorded to her by the First, Fourth and Fourteenth Amendments of the Constitution of the United States and protected to her under the Civil Rights Act of 1871, 42 U.S.C. § 1983.

ARGUMENT

Point 1.

THE FACTUAL "BACKGROUND", OR THE FINDINGS OF FACT, BY THE PANEL'S DECISION OF THIS COURT IS AT VARIANCE WITH THE FACTS ADDUCED ON THE TRIAL AND CORROBORATED BY THE TESTIMONY OF THE DISINTERESTED AND/OR UNBIASED WITNESS WHOSE CREDIBILITY STANDS UNCHALLENGED.

The testimony of the disinterested and unbiased witness, Michael Dewayne Jones, had the tendency to throw light on the accuracy, truthfulness, and sincerity of the plaintiff, PEGGY ROBINSON, including the surrounding

facts and circumstances; and is proper to be considered to show and determine her credibility. *Wright Aeronautical Corp. v. General Motors Corp., Allison Engineering Division,* 166 F.2d 636; *Welch v. Tennessee Valley Authority,* 108 F.2d 95, cert. dn. *Welch v. U. S. ex rel. and for Use of Tennessee Valley Authority,* 309 U.S. 688, 60 S.Ct. 889, 84 L.Ed. 1030, *Lewis v. Tennessee Valley Authority,* 108 F.2d 95, cert. dn. *Lewis v. U. S. ex rel. and for Use of Tennessee Valley Authority,* 309 U.S. 688, 60 S.Ct. 889, 84 L.Ed. 1030.

> There is no legal presumption that police officers are more likely to tell the truth in the trial of a cause than other witnesses, and the credibility of police officers is subject to the same tests that are applied to the testimony of other witnesses. 98 C.J.S. § 461, P. 325, n. 29.

It is submitted, that the testimony of Officer Lynch should not be conclusive or controlling, especially where not disinterestedly and unbiasedly corroborated.

Points 2 and 3.

THERE WAS NO PROBABLE CAUSE FOR THE ARREST: AND THE FORCE USED BY THE ARRESTING OFFICER WAS UNNECESSARY AND EXCESSIVE.

Unless the plaintiff, PEGGY ROBINSON, did not have the right or liberty to withdraw her initial objection to sign the two traffic tickets which were being issued to her by the defendant, Officer POURCIAU, there was no probable cause for the arrest after she exercised that right or liberty to accept the two traffic tickets and sign them prior to the use of any physical and violent force by the arresting officer, or any unnecessary or excessive force by him.

Plaintiff proved that she suffered significant injuries, fractures of the L-1 and L-3 lumbar vertebrae, which resulted directly and only from the clear use of excessive force by the defendant, RANDOLPH POURCIAU, JR., the arresting officer, and the excessiveness of which was objectively unreasonable. *Johnson v. Morel*, 876 F.2d 477, 480 (5th Cir. 1989) (en banc).

It is submitted, that if no force was needed, any amount of unnecessary force was excessive. Excessive is exceeding what is usual and proper. *U.S. v. Oglesby*, 264 F.2d 691, 695; 32A C.J.S. Excessive p. 863, n. 20.

It is submitted that Officer POURCIAU, the arresting officer, had no reason to believe that the plaintiff was about to escape the scene of the investigation of the accident – for she had by telephone call for the investigation, sought the officer's permission to call her son to pick up her car and go her bond, asked the Officer to allow her to sign the traffic tickets so she could continue her journey, and obeyed his order when he beguiled her to get into her car and back it up to be left while she is under arrest or in Jail, which, apparently, was to give the appearance of an attempted escape.

The term **"probable"** is used to refer to past or future occurrences and to human judgments about those occurrences. 72 C.J.S. Probable, p. 269.

Point 4

UNDER 42 U.S.C. § 1983, THE CITY OF BATON ROUGE, AS A MUNICIPALITY, IS LIABLE IN THIS CASE FOR REASONS THAT ITS ADOPTED POLICY MANDATES THAT ITS POLICE OFFICERS ISSUE TRAFFIC TICKETS DISCRETIONARILY AND REQUIRE THE SIGNATURES OF THE TRAFFIC VIOLATORS IN LIEU OF ARREST.

It is undisputed that the defendant, CITY OF BATON ROUGE, has a built-in policy requirement fashioned by the Judges of the Court of the municipality that the Police Officers of the municipality be required to obtain the signatures of all traffic violators to whom traffic tickets may be issued, or arrest the traffic violators who refuse to sign the traffic tickets issued under the color of law. The police officers are given such absolute, discretionary and discriminatory authority – which, when abused by its police officers, the municipality should be held liable and answerable in damages under the Civil Rights Act of 1871, 42 U.S.C. § 1983.

In the case of the *City of Oklahoma City v. Tuttle*, 471 U.S. 808, at 810 (1985), citing the case of *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018 (1978), the Supreme Court held that municipalities are **"persons"** subject to damages liability under Section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, **for violations** of that Act visited **by municipal officials;** but, however, noted,

> that municipal liability could not be premised on the mere fact that the municipality employed the offending official. Instead, we held that municipal liability could only be imposed for

injuries inflicted pursuant to government "policy or custom."

Therefore, it is submitted that the District Court erred by granting the motions for directed verdict by the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO.

CONCLUSION

The present case presents an exact parallel with the facts and application of the law as was foreshadowed by the Supreme Court in the cases of the *City of Oklahoma City v. Tuttle*, Id., and *Monell v. New York City Dept. of Social Services*, Id., conjunctively considered; but, nevertheless, the decision by the panel of the Court in this case seems to be at variance with the tenor of those cases.

For the foregoing reasons plaintiff-appellant, PEGGY ROBINSON, requests an opportunity for a rehearing on these points. Because of the fundamental nature of the

questions presented, it is requested that the rehearing be before the entire Court, sitting **en banc.**

Respectfully submitted,

ATTORNEYS FOR APPELLANT:
JONES & JONES

DATE: September 11, 1991

/s/ Johnnie A. Jones
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CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiff-appellant, PEGGY ROBINSON, does hereby certify that a copy of the above and foregoing

PETITION FOR REHEARING EN BANC

is being forwarded to the opposing counsel of record by regular United States Mail, first-class postage prepaid, addressed as follows:

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Baton Rouge, Louisiana, this 11 day of September, 1991.

/s/ Johnnie A. Jones

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APPENDIX 'P'

CICERO AND MOAK
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April 22, 1991

Hon. Gilbert F. Ganucheau
United States Court of Appeal
Fifth Circuit (Filed APR 24 1991)
Office of The Clerk
600 Camp Street
New Orleans, Louisiana 70130

Re: No. 90-3700 – Robinson -vs- Randolph Pourciau, Jr.

Dear Sir,

In reply to your letter of April 19, 1991, relative to the above, please be advised that my clients have chosen not to file a brief.

Very truly yours,

CICERO & MOAK

/s/ Samuel R. Cicero
Samuel R. Cicero

SRC/tm

cc: (BY FIFTH CIRCUIT) Mr. Johnnie A. Jones, Jr.,